REMARKS

The application has been reviewed in light of the outstanding Office Action dated April 20, 2004. Claims 1-13, 15-23, 24 and 44-59 are currently pending. Claims 14 and renumbered claims 25-43 were previously canceled without prejudice and/or disclaimer of subject matter. Claims 1, 19 and 44, the independent claims, have been amended. Claims 44-59 were previously added. Each of the points raised in the outstanding Action are addressed below.

§112, Second Paragraph Rejection

Claims 1-13, 15-24 and 44-59 were rejected under 35 U.S.C. §112, second paragraph as being indefinite. Specifically, the Action inquired as to the difference between generating an offer and *dynamically* generating an offer. In addition, the Action inquired into the metes and bounds of an "underutilized" product and/or service.

With regard to the metes and bounds of "underutilized", Applicants have deleted this term from the claims since the scope of such a term is subsumed in the term "perishable". Thus, rejection of the claims based on this term is considered moot.

As for the term "dynamically" generating an offer, which includes a dynamically generated price, Applicants submit that this term pertains to, in some embodiments of the invention, generating an offer/price from a number (multiple) prices, based on supply and demand: low demand, lower price; higher demand, higher price. Moreover, in some embodiments of the invention, this is particularly useful in perishable products - a product or service loses value or becomes unavailable during or after a certain time event, and thus may be priced to be more attractive for a buyer). See page 3, line 15, through page 5 line 10.

Prior Art Rejection of The Claims

Claims 1-3, 14, 15, 19, 20, 44-46 and 56 were rejection under §103 as being obvious over U.S. patent no. 6,714,797 (Rautila) in view of U.S. patent no. 6,285,985 (Horstmann). For the following reasons, Applicants submit that the claimed invention is patentable over the cited art.

Amended independent claim 1 is directed to an offer and acceptance method including dynamically generating an offer including a dynamically generated price for a product and/or service based upon the perishability of the product and/or service and pushing the offer to a customer via a wireless mobile device. Amended independent claims 19 and 44 recited similar patentable features.

In the present invention, vendors can, for example, utilize wireless mobile devices for pushing offers to customers for products and services which go unused (i.e., perishable). For example, a vendor may be an airline who generates an offer for a coach seat on a flight which is scheduled to depart within a predetermined time period (e.g., hours prior to the departure time of the flight). Accordingly, the service is perishable as it will no longer be available after the departure of the flight and, moreover, the product/service is underutilized (seats available). The offer is provided via a wireless mobile device since such device (e.g., mobile phones) are generally with the customer. Based on the perishability of the product/service, the price for the product/service may be for a substantial discount (for example) off the regular cost of the seat due to the perishable nature of the product/service.

As understood by Applicants Rautila is simply directed to a system and method for the transfer of digital data to a mobile device. As also understood by Applicants, Horstmann is directed to advertising-subsidized and advertising-enabled software, which provides a mechanism to present advertisements through a software program. User information may be sent to an advertisement server, and comprises the category of software program in which the ad was presented, and the user's usage of the program. Policies on

the nature of the information to be sent to the advertisement server and internet connection information, may be controlled by a software developer using the disclosed system.

Analysis

With respect to 35 U.S.C. §103, in order for the claimed invention to be obvious over the cited references, the combined references much teach or suggest each and every element of the claim. In that regard, Applicants could find nothing in either of the references, when taken alone or in combination, that discloses, teaches or suggests the presently claimed invention. Specifically, neither reference alone or in combinations discloses, teaches or suggests dynamically generating an offer with a dynamically generated price, for a product and/or service based upon the perishability of the product and/or service.

The Action points to column 3 lines 26-40 and column 4, lines 27-40 of Horstmann to disclose the "perishability" of a product and service. Applicants cannot understand how either section of Horstmann discloses such. These sections appear to disclose the ability to monitor use of an application using an independent agent (column 3, lines 26-40), and to disclose an Ad Module Builder Tool, to aid a software developer in the operation of an ad module (column 4, lines 27-40). These sections do not disclose any related subject matter to dynamically generating an offer/price for a perishable product or service.

Thus, if one of ordinary skill in the art combined the teachings of Horstmann and Rautila, which Applicants submit there is not teaching, suggestion or motivation to do so, it would not result in the presently claimed invention. It would merely amount to a system which forwarded advertisement data to a mobile device, and not a system which produced and pushed a dynamically generated offer/price based upon the perishability of the product and/or service to a buyer via a mobile device.

Accordingly, for at least the above reasons, Applicants respectfully submit that

claims 1, 19 and 44 are patentable over the cited prior art. Since remaining art of record fails to meet the deficiencies of Rautila and Horstmann, these claims are patentable over the prior art of record as well.

The remaining claims are each dependent from one or another of independent claims 1, 19 and 44, and thus necessarily incorporate by reference all the elements of their respective base independent claims. Thus, remaining claims are all patentable over the prior art of record for the same reasons set out above.

CONCLUSION

In view of the foregoing remarks, Applicants submit that all the issues raised in the outstanding Action have all been addressed. Accordingly, Applicant respectfully requests favorable reconsideration and early passage to issue of the present application.

No fee is currently due for the present response. However, in the event that it is determined that additional fees are due, the Commissioner is hereby authorized to charge the undersigned's Deposit Account No. 50-0311.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 935-3000. All correspondence should continue to be directed to our address given below.

Respectfully submitted,

Date: July 20, 2004

Eric Sinn 40,177 for Brian Hopkins
Brian P. Hopkins, Reg. No. 42,669
Attorney for Applicants

Mintz Levin Cohn Ferris
Glovsky & Popeo, P.C.
Chrysler Center
666 Third Avenue, 24th Floor
New York, New York 10017
Tel: (212) 935-3000
Fax: (212) 983-3115